

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

BOGOPA SERVICES CORPORATION
D/B/A FOOD BAZAAR¹

Employer

and

Case Nos. 29-RC-10195 and
29-RC-10198

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 342, AFL-CIO

Petitioner

and

LOCAL 890, LEAGUE OF INTERNATIONAL
FEDERATED EMPLOYEES

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before James Kearns, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that Bogopa Services Corporation d/b/a Food Bazaar ("Employer"), a domestic corporation, with its principal office and place of business located at 650 Fountain Avenue, Brooklyn, New York, has been engaged in the operation of supermarkets at various locations including 238 161st Street, Bronx, New

¹ The names of the Employer and Intervenor appear as amended at the hearing.

York; 97-27 57th Avenue, Corona, New York and 17-59 Ridgewood Place, Brooklyn, New York. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, derived gross annual revenues in excess of \$500,000 and purchased and received at its New York facilities, goods valued in excess of \$5,000 directly from points located outside New York State.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved herein claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. United Food and Commercial Workers Union, Local 342, AFL-CIO (“Petitioner”) seeks to represent a unit of all full-time and regular part-time employees employed by the Employer at the following stores: 238 161st Street, Bronx, New York; 97-27 57th Avenue, Corona, New York and 17-59 Ridgewood Place, Brooklyn, New York, but excluding all assistant store managers, store managers, seasonal and/or temporary employees, office clericals, guards, supervisors as defined in Section 2(11) of the Act, and the meat, deli and fish department employees at the 97-27 57th Avenue, Corona, New York, and 17-59 Ridgewood Place, Brooklyn, New York, facilities.²

² The unit description appears as amended at the hearing.

Positions of the Parties

The parties stipulated that the petitioned-for unit is identical to the current contractual unit, set forth in the collective bargaining agreement between the Employer and Local 890, League of International Federated Employees (“Intervenor”), effective July 9, 2001, through July 8, 2004 (Board Exhibit 3). The parties further stipulated that the current contractual unit is an appropriate one. However, the Intervenor took the position that the petitioned-for unit is inappropriate, because “at the beginning,” the Board separately certified three bargaining units at the three petitioned-for locations, after holding three separate elections.³ In addition, the Intervenor contends that there is “no interchange of the operations.”

The Intervenor declined to present evidence or an offer of proof in support of its position.

Appropriateness of the Petitioned-For Bargaining Unit

It is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enfd on other grounds*, 190 F.2d 576 (7th Cir. 1951). In resolving unit issues pertaining to multi-location employers, the Board considers the geographical relationship among the facilities involved; the functional integration of operations; the degree of employee interchange; the similarity of employee skills, functions, working conditions, and benefits; shared supervision; the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations; bargaining history, if any

³ These original certifications were not offered into evidence.

exists; and the extent of organization. *See, e.g., Novato Disposal Services, Inc.*, 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald's Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961).

The instant record contains evidence regarding just two of these factors:

Extent of Organization

The Petitioner's organizing campaign encompassed the petitioned-for employees.

Bargaining History

The current collective bargaining agreement encompasses the petitioned-for employees. The parties stipulated that the contract unit is appropriate.

Based on the record evidence, and the stipulations of the parties, I conclude that the petitioned-for unit is an appropriate one. Accordingly, I will direct an election in the following unit, which I find to be appropriate for the purposes of collective bargaining:

All full-time and regular part-time employees employed by the Employer at the following stores: 238 161st Street, Bronx, New York; 97-27 57th Avenue, Corona, New York and 17-59 Ridgewood Place, Brooklyn, New York, but excluding all assistant store managers, store managers, seasonal and/or temporary employees, office clericals, guards, supervisors as defined in Section 2(11) of the Act, and the meat, deli and fish department employees at the 97-27 57th Avenue, Corona, New York, and 17-59 Ridgewood Place, Brooklyn, New York, facilities.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether

they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers Union, Local 342, AFL-CIO, by Local 890, League of International Federated Employees, or by neither labor organization. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One MetroTech Center North, 10th Floor, Brooklyn, New York 11201, on or before **May 6, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579 or by electronic transmission at Region29@NLRB.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or E-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 13, 2004**. The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: April 29, 2004, Brooklyn, New York.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201